

Short Title: GSC Sale of Property Amendments.

A BILL TO BE ENTITLED

AN ACT TO (I) UPDATE THE MAILING METHOD OF NOTICE TO A JUDGMENT
DEBTOR OF AN EXECUTION SALE OF REAL PROPERTY, (II) CLARIFY THE
EFFECTS OF A DEFAULT BID IN PRIVATE JUDICIAL SALES AND PUBLIC OR
PRIVATE PARTITION SALES, AND (III) AMEND THE TAX FORECLOSURE
STATUTES AND MAKE TECHNICAL CHANGES, AS RECOMMENDED BY THE
GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. UPDATE MAILING METHOD OF NOTICE IN EXECUTION SALES

SECTION 1.(a) G.S. 1-339.54 reads as rewritten:

"§ 1-339.54. Notice to judgment debtor of sale of real property.

In addition to complying with G.S. 1-339.52, relating to posting and publishing the notice of
sale, the sheriff shall, at least ten days before the sale of real property, take the following action:

(1) If the judgment debtor is found in the county, serve a copy of the notice of
sale on ~~him personally, or~~ the judgment debtor personally.

(2) If the judgment debtor is not found in the county, send and serve notice as
follows:

a. Send a copy of the notice of sale by registered ~~mail~~ or certified mail,
return receipt requested, to the judgment debtor at ~~his~~ the judgment
debtor's last address known to the ~~sheriff, and~~ sheriff.

b. Serve a copy of the notice of sale on the judgment debtor's agent, if
there is in the county a person known to the sheriff to be an agent who

has custody or management of, or who exercises control over, any
property in the county belonging to the judgment debtor."

SECTION 1.(b) This section becomes effective October 1, 2021, and applies to
executions issued on or after that date.

PART II. CLARIFY EFFECTS OF DEFAULT BIDS IN PRIVATE JUDICIAL SALES AND PUBLIC OR PRIVATE PARTITION SALES

SECTION 2.(a) G.S. 1-339.36 reads as rewritten:

"§ 1-339.36. Private sale; upset bid; subsequent ~~procedure~~procedure; defaulting bidder.

(a) Every private sale of real or personal property, except a sale of personal property as
provided by G.S. 1-339.34, is subject to an upset bid on the same conditions and in the same
manner as is provided by G.S. 1-339.25.

(b) When an upset bid is made for property sold at private sale, subsequent procedure
with respect to the upset bid is the same as for upset bids submitted in connection with real
property sold at public sale, except that the notice of any resale of personal property held pursuant
to an order granted under G.S. 1-339.27A need not be published in a newspaper but shall be
posted as provided by G.S. 1-339.17.

(c) Subsections (e) and (f) of G.S. 1-339.30 apply to a defaulting bidder in a private sale."

SECTION 2.(b) Part 3 of Article 2 of Chapter 46A of the General Statutes is
amended by adding a new section to read:

"§ 46A-84.5. Petition for revocation based on default bid.

If a purchaser in a partition sale defaults on the purchaser's bid, any party to the partition
proceeding or the officer or person designated to make the sale may at any time petition the court
to revoke its order confirming the partition sale. The petitioner for revocation shall serve all
parties required to be served under G.S. 1A-1, Rule 5, and, if the purchaser is not a party, serve

the purchaser under G.S. 1A-1, Rule 4(j). If the court finds that the purchaser defaulted on the purchaser's bid and is unable to cure the default, the court shall revoke its order of confirmation and order a resale."

SECTION 2.(c) G.S. 46A-83 reads as rewritten:

"§ 46A-83. Petition for revocation of confirmation order.

(a) Grounds for Revocation. – Notwithstanding G.S. 46A-76 or any other provision of law, within 15 days of entry of the order confirming the partition sale of real property, the purchaser or any party to the partition proceeding may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

- (1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.
- (2) In the case of any party to the partition proceeding, any of the following:
 - a. Notice of the partition was not served on the petitioner for revocation as required by G.S. 1A-1, Rule 4.
 - b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46A-76(d).
 - c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

...

(c) Service; Notice of Hearing. – The party petitioning for revocation shall ~~deliver a copy of the petition to~~ serve all parties required to be served under G.S. 1A-1, Rule 5, and shall serve the officer or person designated to make the sale under G.S. 1A-1, Rule 4(j). The court shall

schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make the sale, and all parties required to be served under G.S. 1A-1, Rule 5.

...."

SECTION 2.(d) This section is effective when it becomes law and applies to actions or proceedings pending on or commenced on or after that date.

PART III. AMENDMENTS REGARDING COMMISSIONER'S FEES IN TAX FORECLOSURE ACTIONS AND REMOVAL OF OBSOLETE LANGUAGE

SECTION 3.(a) G.S. 105-374 reads as rewritten:

"§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(a) General Nature of Action. – The foreclosure action authorized by this section is in the nature of an action to foreclose a mortgage and shall be instituted in the appropriate division of the General Court of Justice in the county in which the real property is ~~situated and shall be an action in the nature of an action to foreclose a mortgage situated.~~

(b) Tax Lien. – Taxing units may proceed under this ~~section, either section~~ on the ~~original~~ tax lien created by ~~G.S. 105-355(a) or on the lien acquired at a tax lien sale held under former G.S. 105-369 before July 1, 1983, with or without a lien sale certificate; and the amount of recovery in either case shall be the same. To this end, it is hereby declared that the original attachment of the tax lien under G.S. 105-355(a) is sufficient to support a tax foreclosure action by a taxing unit, that the issuance of a lien sale certificate to the taxing unit for lien sales held before July 1, 1983, is a matter of convenience in record keeping within the discretion of the governing body of the taxing unit, and that issuance of such certificates is not a prerequisite to perfection of the tax lien.~~ G.S. 105-355(a).

(c) Parties; ~~Summonses.~~ The owner of record as of the date the taxes became delinquent and spouse (if any), any subsequent owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, Summons. – Each of the following persons shall be made parties and shall be served with ~~summonses~~ a summons in the manner provided by ~~G.S. 1A-1, Rule 4.~~G.S. 1A-1, Rule 4:

(1) The owner of record and the owner's spouse, if any.

(2) All other taxing units having tax liens.

(3) All other lienholders of record. Trustees in deeds of trust, however, shall not be made parties and served; G.S. 45-45.3 applies to this section.

(4) All persons that would be entitled to be made parties to a court action to foreclose a mortgage on the property in which no deficiency judgment is sought.

The fact that the owner of record as of the date the taxes became delinquent, any subsequent owner, or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and ~~all such~~ each of these persons shall be made parties and shall be served with a summons in the same manner as in other civil actions.

Persons ~~who have disappeared or who that~~ cannot be located and located, persons whose names and whereabouts are unknown, and all possible heirs or assignees of ~~such persons, these~~ persons may be served by publication; and ~~such these~~ persons, their heirs, and assignees may be designated by general description or by fictitious names in ~~such an the~~ action.

(c1) Lienholders Separately Designated. – The word "lienholder" shall appear immediately after the name of each lienholder (including ~~trustees and~~ beneficiaries in deeds of ~~trust, trust~~ and holders of judgment liens) whose name appears in the caption of any action

instituted under ~~the provisions of~~ this section. ~~Such~~ This designation is intended to make clear to the public the capacity of ~~such~~ these persons ~~which~~ that necessitated their having been made parties to ~~such~~ the action. Failure to add ~~such~~ this designation to captions ~~shall~~ does not constitute grounds for attacking the validity of ~~actions~~ an action brought under this ~~section~~ section or ~~titles~~ the title to real property derived from ~~such actions~~ the action.

(d) Complaint as Lis Pendens. – The complaint in an action brought under this section shall, from the time it is filed in the office of the clerk of superior court, serve as notice of the pendency of the foreclosure action, and every person whose interest in the real property is subsequently acquired or whose interest ~~therein~~ in the property is subsequently registered or recorded shall be bound by all proceedings taken in the foreclosure action after the filing of the complaint in the same manner as if those persons had been made parties to the action. It ~~shall not~~ be is not necessary to have the complaint cross-indexed as a notice of action pending to have the effect prescribed by this ~~subsection (d)~~ subsection.

(e) Subsequent Taxes. – The complaint in a tax foreclosure action brought under this section by a taxing unit shall, in addition to alleging the tax lien on which the action is based, include a general allegation of subsequent taxes ~~which~~ that are or may become a lien on the same real property in favor of the plaintiff unit. Thereafter it shall not be necessary to amend the complaint to incorporate the subsequent taxes by specific allegation. In case of redemption before confirmation of the foreclosure sale, the person redeeming shall be required to pay, before the foreclosure action is discontinued, at least all taxes on the real property ~~which~~ that have at the time of discontinuance become due to the plaintiff unit, plus penalties, interest, and ~~costs thereon~~ costs. Immediately prior to judgment ordering sale in a foreclosure ~~action~~ (if action, if there has been no redemption prior to that time), time, the tax collector or the attorney for the plaintiff unit shall file in the action a certificate setting forth all taxes ~~which~~ that are a lien on the real property

in favor of the plaintiff ~~unit (other unit, other~~ than taxes the amount of which has not been
definitely ~~determined)-determined.~~

(e1) Taxes Paid by Plaintiff. – Any plaintiff in a tax foreclosure ~~action (other action, other~~
than a taxing ~~unit)-unit,~~ may include in ~~his~~the complaint, originally or by amendment, all other
taxes and special assessments paid by ~~him~~which the plaintiff that were liens on the same real
property.

(f) Joinder of Parcels. – All real property within the taxing unit subject to liens for taxes
levied against the same taxpayer for the first year involved in the foreclosure action may be joined
in one action. However, if real property is transferred by the listing taxpayer subsequent to the
first year involved in the foreclosure action, all subsequent taxes, penalties, interest, and costs
~~(for for~~ which the property is ordered sold under ~~the terms of this Subchapter)-this Subchapter~~
shall be prorated to ~~such~~the property in the same manner as if payments were being made to
release ~~such~~the property from the tax lien under ~~the provisions of~~ G.S. 105-356(b).

(g) Special Benefit Assessments. – A cause of action for the foreclosure of the lien of any
special benefit assessments may be included in any complaint filed under this section.

(h) Joint Foreclosure by Two or More Taxing Units. – Liens of different taxing units on
the same parcel of real property, representing taxes in the hands of the same tax collector, shall
be foreclosed in one action. Liens of different taxing units on the same parcel of real property,
representing taxes in the hands of different tax collectors, may be foreclosed in one action in the
discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged
in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to
judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax
collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with
the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's

taxes, continue the foreclosure action until all taxes due to it have been paid, and it ~~shall not be~~
~~is not necessary~~ for any answering unit to file a separate foreclosure action or to proceed under
G.S. 105-375 with respect to ~~any such the~~ taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer
and file the certificate of subsequent taxes provided for in ~~the preceding paragraph, this~~
subsection, all of its taxes shall be barred by the judgment of sale except to the extent that the
purchase price at the foreclosure sale ~~(after sale, after payment of costs and of the liens of all~~
taxing units whose liens are properly alleged by complaint or answer and ~~certificates) may be~~
certificates, is sufficient to pay ~~such the~~ taxes. However, if a defendant taxing unit is plaintiff in
another foreclosure action pending against the same property, or if it has begun a proceeding
under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in
its discretion, may order consolidation of ~~such the~~ actions or such other disposition ~~thereof (and~~
~~such disposition of the costs therein) of the actions, including disposition of the costs~~, as it ~~may~~
~~deem~~ deems advisable. ~~Any such~~ The order may be made by the clerk of the superior court,
subject to appeal as provided in G.S. 1-301.1.

(i) Costs. – ~~Subject to the provisions of this subsection (i),~~ Except as modified by this
subsection, costs may be taxed in any foreclosure action brought under this section in the same
manner as in other civil actions. When costs are collected, either by payment prior to the sale or
upon payment of the purchase price at the foreclosure sale, the fees allowed officers shall be paid
to those entitled to receive them. In foreclosure actions in which the plaintiff is a taxing unit, no
prosecution bond shall be required.

The word "costs," as used in this ~~subsection (i), shall be construed to include one subsection~~,
includes a reasonable attorney's fee for the plaintiff in such amount as the court shall, in its
discretion, determine and allow. When a taxing unit is made a party defendant in a tax foreclosure
action and files ~~answer therein, there may be included an answer, the court may include~~ in the

costs an attorney's fee for the defendant unit in ~~such amount as the court shall, an amount that~~
~~the court, in its discretion, determine and allow.~~ determines and allows. The governing body of
any taxing unit may, in its discretion, pay a smaller or greater sum than that allowed as costs to
its attorney as a suit fee, and the governing body may allow a reasonable commission to its
attorney on taxes collected by ~~him after they have been placed in his hands; or the attorney.~~
Alternatively, the governing body may arrange with its attorney for the handling of tax
foreclosure suits on a salary basis or may make any other reasonable agreement with its ~~attorney~~
~~or attorneys.~~ attorney. Any arrangement made between a taxing unit and its attorney may provide
that attorneys' fees collected as costs in foreclosure actions shall be collected for the use of the
taxing unit.

In any foreclosure action in which ~~real property is actually sold after judgment, the court~~
enters a judgment confirming the sale of real property, costs shall include a commissioner's fee
to be fixed by the court, not exceeding five percent (5%) of the purchase ~~price; and in price.~~ In
case of redemption ~~between the date of sale and the order prior to the judgment~~ of confirmation,
~~the a commissioner's fee shall not be added to the amount otherwise necessary for redemption.~~
In case more than one sale is made of the same property in any action, the commissioner's fee
may be based on the highest amount bid, but the commissioner shall not be allowed a separate
fee for each such sale. The governing body of any plaintiff unit may request the court to appoint
as commissioner a salaried official, attorney, or employee of the unit and, when the requested
appointment is made, may require that the commissioner's fees, when collected, be paid to the
plaintiff unit for its use.

(j) Contested Actions. – Any action brought under this section in which an answer raising
an issue requiring trial is filed within the time allowed by law ~~shall be is~~ is entitled to a preference
as to time of trial over all other civil actions.

(k) Judgment of Sale. – Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or as much as may be necessary for the satisfaction of all of the following:

(1) Taxes adjudged to be liens in favor of the ~~plaintiff (other plaintiff, other than~~ taxes the amount of which has not been definitely ~~determined)~~ determined, together with penalties, interest, and ~~costs thereon.~~ costs.

(2) Taxes adjudged to be liens in favor of other taxing ~~units (other units, other~~ than taxes the amount of which has not yet been definitely ~~determined)~~ determined, if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and ~~costs thereon.~~ costs.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever, except that the sale shall be subject to (i) taxes the amount of which cannot be definitely determined at the time of the judgment, (ii) taxes and special assessments of taxing units which are not parties to the action, ~~and~~ and (iii) in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of ~~said the~~ property, the clerk of the superior court may enter the judgment, subject to appeal as provided in G.S. 1-301.1.

(l) Advertisement of Sale. – The sale ~~shall be advertised,~~ and all necessary resales shall be ~~advertised,~~ advertised in the manner provided by Article 29A of Chapter 1 of the General Statutes or by any statute enacted in substitution therefor. Statutes.

(m) Sale. – The sale shall be by public auction to the highest bidder and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a Sunday or legal holiday when the courthouse is closed for transactions. ~~(In In~~ actions brought by

a municipality that is not a county seat, the court may, in its discretion, direct that the sale be held at the city or town hall ~~door~~ door.

(m1) Deposit from Bidder. – The commissioner conducting the sale may, in ~~his~~ the commissioner's discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of ~~his bid, which deposit, in the bid.~~ In the event that the bidder refuses to take title and a resale becomes necessary, the deposit shall be applied to pay the costs of sale and any loss resulting. (However, this provision shall not deprive Nothing in this subsection deprives the commissioner of ~~his~~ the commissioner's right to sue for specific performance of the ~~contract~~ contract. No deposit shall be required of a taxing unit that has made the highest bid at the foreclosure sale.

(n) Report of Sale. – Within three days following the foreclosure ~~sale~~ sale, the commissioner shall report the sale to the court giving full particulars ~~thereof~~ of the sale.

(o) Exceptions and Increased Bids. – At any time within 10 days after the commissioner files ~~his~~ the report of the foreclosure sale, any person having an interest in the real property may file exceptions to the report, and at any time within that 10-day ~~period~~ period, an increased bid may be filed in the amount specified by and subject to the provisions ~~(other than provisions in conflict herewith)~~ (other than provisions in conflict herewith) of Article 29A of Chapter 1 of the General ~~Statutes or the provisions (other than provisions in conflict herewith) of any law enacted in substitution therefor.~~ Statutes, except as otherwise provided by this section. In the absence of exceptions or increased bids, the court may, whenever it deems ~~such action~~ it necessary for the best interests of the parties, order resale of the property.

(p) Judgment of Confirmation. – At any time after the expiration of 10 days from the time the commissioner files ~~his~~ the report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner ~~he~~ the commissioner may apply for ~~such a~~ judgment of confirmation after the court has passed upon exceptions filed,

or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be entered by the clerk of superior court subject to appeal as provided in G.S. 1-301.1. This judgment shall bear interest at [an annual rate of eight percent (8%)] [at the same rate as a judgment entered under G.S. 105-375].

(q) Application of Proceeds; Commissioner's Final Report. – After delivery of the deed and collection of the purchase price, the commissioner shall apply the proceeds as follows:

- (1) First, to payment of all costs of the action, including the commissioner's fee and the attorney's fee, ~~which costs fee.~~ The costs shall be paid to the officials or funds entitled ~~thereto; to them.~~
- (2) Then to the payment of taxes, penalties, and interest for which the real property was ordered to be sold, and in case the funds remaining are insufficient for this purpose, they shall be distributed pro rata to the various taxing units for whose taxes the property was ordered ~~sold;~~ sold.
- (3) Then pro rata to the payment of any special benefit assessments for which the property was ordered sold, together with interest and ~~costs thereon;~~ costs.
- (4) Then pro rata to payment of taxes, penalties, interest, and costs of taxing units that were parties to the foreclosure action but ~~which that~~ that filed no answers ~~therein;~~ in the action.
- (5) Then pro rata to payment of special benefit assessments of taxing units that were parties to the foreclosure action but ~~which that~~ that filed no answers ~~therein,~~ in the action, together with interest and ~~costs thereon;~~ costs.
- (6) And any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of ~~such~~ directions, shall be paid into court for the benefit of the persons entitled ~~thereto.~~ (If to it. If the

clerk is in doubt as to ~~who~~ which person is entitled to the surplus or if any
adverse claims are asserted ~~thereto~~, to the surplus, the clerk shall hold the
surplus until rights ~~thereto~~ to it are established in a special proceeding
pursuant to ~~G.S. 1-339.71.~~ G.S. 1-339.71.

Within five days after delivering the deed, the commissioner shall make a full report to the court
showing delivery of the deed, receipt of the purchase price, and the disbursement of the proceeds,
accompanied by receipts evidencing all ~~such~~ the disbursements.

(r) Purchase and Resale by Taxing Unit. – The rights of a taxing unit to purchase real
property at a foreclosure sale and resell it are governed by G.S. 105-376."

SECTION 3.(b) G.S. 105-375 reads as rewritten:

"§ 105-375. In rem method of foreclosure.

(a) Intent of Section. – ~~It is hereby declared to be the intention of this section that~~
~~proceedings~~ Proceedings brought under it ~~shall be~~ this section are strictly in rem. ~~It is further~~
~~declared to be the intention of this section to provide,~~ This section provides, as an alternative to
G.S. 105-374, a simple and inexpensive method of enforcing payment of taxes necessarily levied,
to the knowledge of all persons, for the requirements of local governments in this State; ~~and to~~
~~recognize,~~ State and recognizes, in authorizing this proceeding, that all persons owning interests
in real property know or should know that the tax lien on their real property may be foreclosed
and the property sold for failure to pay taxes.

(b) Docketing Certificate of Taxes as Judgment. – In lieu of following the procedure set
forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to file
with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a
certificate showing the following: the name of the ~~taxpayer~~ taxpayer, as defined in
~~G.S. 105-273(17),~~ G.S. 105-273, for each parcel on which the taxing unit has a lien for unpaid
taxes, together with the amount of taxes, penalties, interest, and costs that are a lien ~~thereon;~~ on

1 it; the year or years for which the taxes are due; and a description of the property sufficient to
2 permit its identification by parol testimony. The fees for docketing and indexing the certificate
3 assessed pursuant to G.S. 7A-308(a)(11) ~~shall be~~ are payable to the clerk of superior court at the
4 time the taxes are collected or the property is sold.

5 (c) Notice to Taxpayer and Others. –

6 (1) Notice required. – The tax collector filing the certificate provided for in
7 subsection (b) of this section, shall, at least 30 days prior to docketing the
8 judgment, send notice of the tax lien foreclosure to the taxpayer, as defined in
9 ~~G.S. 105-273(17);~~ G.S. 105-273, at the taxpayer's last known ~~address;~~ address
10 and to all lienholders of record ~~who~~ that have a lien against the taxpayer
11 (including any liens referred to in the conveyance of the property to the
12 taxpayer). The tax collector, however, shall not send notice to trustees in deeds
13 of trust; G.S. 45-45.3 applies to this section.

14 (2) Contents of notice. – All notice required by this subsection shall state that a
15 judgment will be docketed and the proposed date of the docketing, that
16 execution will be issued as provided by law, a brief description of the real
17 property affected, and that the lien may be satisfied prior to judgment being
18 entered.

19 (3) Service of notice. – The notice required by this subsection shall be sent to the
20 taxpayer by registered or certified mail, return receipt requested.

21 (4) Additional efforts may be required. – If within 10 days following the mailing
22 of the notice, a return receipt has not been received by the tax collector
23 indicating receipt of the notice, then the tax collector shall do both of the
24 following:

- 1 a. Make reasonable efforts to locate and notify the taxpayer and all
2 lienholders of record prior to the docketing of the judgment and the
3 issuance of the execution. Reasonable efforts may include posting the
4 notice in a conspicuous place on the property, or, if the property has
5 an address to which mail may be delivered, mailing the notice by
6 first-class mail to the attention of the occupant.
- 7 b. Have a notice published in a newspaper of general circulation in the
8 county once a week for two consecutive weeks directed to, and
9 naming, all unnotified lienholders and the taxpayer that a judgment
10 will be docketed against the taxpayer.

11 (5) Costs of notice added to lien. – All costs of mailing and publication, plus a
12 charge of two hundred fifty dollars (\$250.00) to defray administrative costs,
13 shall be added to the amount of taxes that are a lien on the real property and
14 shall be paid by the taxpayer to the taxing unit at the time the taxes are
15 collected or the property is sold.

16 (d) Effect of Docketing Certificate of Taxes Due. – Immediately upon the docketing and
17 indexing of a certificate as provided in subsection ~~(b), above, (b) of this section,~~ the taxes,
18 penalties, interest, and costs ~~shall constitute~~ constitute a valid judgment against the real property
19 described ~~therein, in the judgment,~~ with the priority provided for tax liens in G.S. 105-356. The
20 judgment, except as expressly provided in this section, ~~shall have~~ has the same force and effect
21 as a duly rendered judgment of the superior court directing sale of the property for the satisfaction
22 of the tax lien, and it shall bear interest at an annual rate of eight percent (8%).

23 (e) Special Assessments. – Street, sidewalk, and other special assessments may be
24 included in any judgment for taxes taken under this section, or the special assessments may be
25 included in a separate judgment docketed under this section. The tax collector may use ~~such a~~

1 the judgment as a method of foreclosing the lien of special assessments. When used to foreclose
2 the lien of special assessments, the procedure may be instituted at any time after the assessment
3 or installment falls due and remains unpaid; the waiting period required by subsection (b) of this
4 section does not apply to the foreclosure of special assessments.

5 (f) Motion to Set Aside. – At any time prior to the issuance of execution, any person
6 having an interest in the real property to be foreclosed may appear before the clerk of superior
7 court and move to set aside the judgment on the ground that the tax has been paid or that the tax
8 lien on which the judgment is based is invalid.

9 (g) Cancellation upon Payment. – Upon payment in full of any judgment docketed under
10 this section, together with interest ~~thereon~~ and costs accrued to the date of payment, the tax
11 collector receiving payment shall certify the fact ~~thereof~~ of the payment to the clerk of superior
12 court and cancel the judgment.

13 (h) Relationship between G.S. 105-374 and This Section. – If, before the issuance of
14 execution on the judgment under subsection ~~(i), below, (i) of this section,~~ the taxing unit is made
15 a defendant in a foreclosure action brought against the property under G.S. 105-374, it shall file
16 an answer in that proceeding and thereafter all proceedings shall be governed by order of the
17 court in accordance with that section.

18 (i) Issuance of Execution. – At any time after three months and before two years from
19 the indexing of the judgment as provided in subsection ~~(b), above, (b) of this section,~~ execution
20 shall be issued at the request of the tax collector in the same manner as executions are issued
21 upon other judgments of the superior court, and the real property shall be sold by the sheriff in
22 the same manner as other real property is sold under execution with the following exceptions:

23 (1) No debtor's exemption shall be allowed.

24 (2) In lieu of personal service of notice on the taxpayer, the sheriff shall send
25 notice by registered or certified mail, return receipt requested, to the taxpayer

1 at the taxpayer's last known address at least 30 days prior to the day fixed for
2 the sale. If within 10 days following the mailing of the notice, a return receipt
3 has not been received by the sheriff indicating receipt of the notice, then the
4 sheriff shall make additional efforts to locate and notify the taxpayer and all
5 lienholders of record of the sale under execution in accordance with
6 subdivision (4) of subsection (c) of this section. The sheriff, however, shall
7 not notify trustees in deeds of trust.

8 (3) The sheriff shall add to the amount of the judgment as costs of the sale any
9 postage expenses incurred by the tax collector and the sheriff in foreclosing
10 under this section.

11 (4) In any advertisement or posted notice of sale under execution, the sheriff may
12 (and at the request of the governing body shall) combine the advertisements
13 or notices for properties to be sold under executions against the properties of
14 different taxpayers in favor of the same taxing unit or group of units; however,
15 the property included in each judgment shall be separately described and the
16 name of the taxpayer specified in connection with ~~each~~. each property.

17 The purchaser at the execution sale ~~shall acquire~~ acquires title to the property in fee simple
18 free and clear of all claims, rights, interests, and liens except the liens of other taxes or special
19 assessments not paid from the purchase price and not included in the judgment.

20 (i1) Fee. – The fee assessed in G.S. 7A-308(a)(1a) ~~shall be~~ is payable to the clerk of
21 superior court out of the sale proceeds at the time the property is sold.

22 (j) Attorney's Fee. – The governing body of the taxing unit may make whatever
23 arrangement it deems satisfactory for compensating an attorney rendering assistance or advice in
24 foreclosure proceedings brought under this section, but the attorney's fee shall not be added to
25 the judgment as part of the costs of the action.

(k) Consolidation of Liens. – By agreement between the governing bodies, two or more taxing units may consolidate their tax liens for the purpose of docketing a judgment, or may have one execution issued for separate judgments, against the same property. In like manner, one execution may issue for separate judgments in favor of one or more taxing units against the same property for different years' taxes.

(l) Purchase and Resale by Taxing Unit. – The rights of a taxing unit to purchase real property at a foreclosure sale and resell it are governed by G.S. 105-376.

(m) Procedure if Section Declared Unconstitutional. – If any provisions of this section are declared invalid or unconstitutional by the Supreme Court of North Carolina, a United States district court of three judges, the United States Circuit Court of Appeals, or the United States Supreme Court, all taxing units that have proceeded under this section shall have five years from the date of the filing of the opinion (or, in the case of appeal, from the date of the filing of the opinion on appeal) in which to institute foreclosure actions under G.S. 105-374 for all taxes included in judgments taken under this section and for subsequent taxes due or which, but for purchase of the property by the taxing unit, would have become due; and ~~such~~the judicial decision shall not have the effect of invalidating the tax lien or disturbing its priority."

[Staff Note: G.S. 45-45.3 provides:

§ 45-45.3. Trustee in a deed of trust.

(a) The following definitions apply in this section:

(1) Secured creditor. – The holder, owner, or assignee of the obligation secured by a deed of trust.

(2) Trustee. – The trustee or substitute trustee then serving as such under the terms of a deed of trust.

(b) Unless the deed of trust provides otherwise, all of the following may be done without the knowledge, consent, or joinder of the trustee:

(1) Pursuant to G.S. 45-36.23, an obligation may be declared by the owner and holder of the obligation to be no longer secured by the deed of trust.

(2) Property may be released from the lien of a deed of trust by the secured creditor.

(3) The lien of a deed of trust may be released or subordinated by the secured creditor.

(4) The terms of a deed of trust may be modified by the secured creditor and the then record owner of the property encumbered by the lien of the deed of trust.

(5) *The deed of trust may be satisfied of record by the secured creditor.*
(c) *Except in matters relating to the foreclosure of the deed of trust or the exercise of a power of sale under the terms of the deed of trust, the trustee is neither a necessary nor a proper party to any civil action or proceeding involving (i) title to the real property encumbered by the lien of the deed of trust or (ii) the priority of the lien of the deed of trust. Examples of civil actions or proceedings in which the trustee is neither a necessary nor a proper party include, but are not limited to, civil actions or proceedings relating to:*

- (1) *Condemnation.*
- (2) *Bankruptcy.*
- (3) *The establishment or correction of title to real property, including, but not limited to, actions to quiet title, reform land records, or resolve boundary line disputes.*
- (4) *Fraudulent conveyances.*
- (5) *The creation or enforcement of an attachment or judgment lien.*
- (6) *The foreclosure of a lien other than the lien of the deed of trust, regardless of whether the lien is superior or subordinate to the lien of the deed of trust, including, but not limited to, the foreclosure of mortgages, other deeds of trust, tax liens, and assessment liens.*
- (7) *The establishment, perfection, or enforcement of a mechanic's or materialman's lien.*
- (8) *The creation or enforcement of a constructive trust, resulting trust, or equitable lien relating to the property.*
- (9) *The partition of real property.*
- (10) *The interpretation or enforceability of a will, trust, or estate.*
- (11) *A subrogation claim or other equitable claim or defense involving the priority or enforceability of a deed of trust.*
- (12) *Determination or enforcement of rights and obligations involving easements or restrictive covenants.*

(d) *If a trustee is improperly joined as a party to an action or proceeding when this section provides that the trustee is neither a necessary nor a proper party to that action or proceeding, then:*

- (1) *Upon motion duly made by any party to the action or proceeding, the trustee shall be dismissed from the action or proceeding;*
- (2) *Regardless of whether the trustee makes an appearance in the action or proceeding, no entry of a default or default judgment shall be entered against the trustee; and*
- (3) *If the trustee makes an appearance in the action or proceeding, each person who improperly joined the trustee as a party to the action or proceeding shall be jointly and severally liable to the trustee for all the expenses and costs incurred by the trustee in the defense of the action or proceeding or in obtaining the trustee's dismissal from the action or proceeding, including the reasonable attorneys' fees actually incurred by the trustee.*

(e) *Except as expressly provided in this section, this section is not in derogation of case law and statutory provisions that vest legal title to property conveyed by a deed of trust in the trustee named therein.]*

SECTION 3.(c) G.S. 105-373 reads as rewritten:

"§ 105-373. Settlements.

(a) Annual Settlement of Tax Collector. –

(1) Preliminary Report. – After July 1 and before ~~he~~a tax collector is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit ~~showing~~showing all of the following:

a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each ~~person; and~~person.

b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. ~~(To~~To this list the tax collector shall append ~~his~~a statement under oath that ~~he~~the tax collector has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means available ~~to him~~ for collection, and ~~he~~the tax collector shall report ~~such~~any other information concerning these taxpayers ~~as~~that may be of interest to or required by the governing body, including a report of ~~his~~the tax collector's efforts to make collection outside the taxing unit under ~~the provisions of G.S. 105-364.)~~G.S. 105-364. The governing body of the taxing unit may publish this list in any newspaper in the taxing unit.

The cost of publishing this list shall be paid by the taxing unit.

(2) Insolvents. – Upon receiving the report required by subdivision ~~(a)(1), above~~(a)(1) of this section, the governing body of the taxing unit shall enter upon its minutes the names of persons owing taxes ~~(but who~~taxes, but that listed no real ~~property) whom~~property, that it finds to be insolvent, and it shall by

resolution designate the list entered in its minutes as the insolvent list to be credited to the tax collector in ~~his~~the tax collector's settlement.

(3) Settlement for Current Taxes. – After July 1 and before ~~he~~a tax collector is charged with taxes for the current fiscal year, the tax collector shall make full settlement with the governing body of the taxing unit for all taxes in ~~his~~the tax collector's hands for collection for the preceding fiscal year. The following charges and credits apply:

a. In the settlement the tax collector shall be charged ~~with~~with all of the following:

1. The total amount of all taxes in ~~his~~the tax collector's hands for collection for the year, including amounts originally charged to ~~him~~the tax collector and all amounts subsequently charged on account of ~~discoveries~~discoveries.
2. All penalties, interest, and costs collected by ~~him~~the tax collector in connection with taxes for the current ~~year~~year; ~~and year~~.
3. All other sums collected by ~~him~~the tax collector.

b. The tax collector shall be credited ~~with~~with all of the following:

1. All sums representing taxes for the year deposited by ~~him~~the tax collector to the credit of the taxing unit or receipted for by a proper official of the ~~unit~~unit.
2. Releases duly allowed by the governing ~~body~~body.
3. The principal amount of taxes constituting liens on real ~~property~~property.

4. The principal amount of taxes included in the insolvent list determined in accordance with subdivision ~~(a)(2), above;~~ (a)(2) of this section.
5. Discounts allowed by ~~law;~~ law.
6. ~~Commissions (if any)~~ Commissions, if any, lawfully payable to the tax collector as ~~compensation;~~ and compensation.
7. The principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

The tax collector shall be liable on ~~his~~ the tax collector's bond for both honesty and faithful performance of duty; for any deficiencies; and, in addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect ~~thereto,~~ to it, shall be entered in full upon the minutes of the governing body.

- (4) Disposition of Tax Receipts after Settlement. – Uncollected taxes allowed as credits in the settlement prescribed in subdivision ~~(a)(3), above,~~ (a)(3) of this section, whether represented by tax liens held by the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority. The person charged with uncollected taxes ~~shall~~ shall take the following actions:
 - a. Give bond satisfactory to the governing ~~body;~~ body.
 - b. Receive the tax receipts and tax records representing the uncollected ~~taxes;~~ taxes.

c. Have and exercise all powers and duties conferred or imposed by law upon tax ~~collectors~~; and collectors.

d. Receive compensation as determined by the governing body.

(b) Settlements for Delinquent Taxes. – Annually, at the time prescribed for the settlement provided in subdivision ~~(a)(3), above, (a)(3) of this section~~, all persons having in their hands for collection any taxes for years prior to the year involved in the settlement shall settle with the governing body of the taxing unit for collections made on each ~~such~~ prior year's taxes. The settlement for the taxes for prior years shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(c) Settlement at End of Term. – ~~Whenever any tax collector fails to succeed himself at~~ At the end of his-a tax collector's last term of office, he-the tax collector shall, on the last business day of ~~his-the~~ term, make full and complete settlement for all ~~taxes (current taxes, current or delinquent)~~ delinquent, in ~~his-the~~ tax collector's hands and deliver the tax records, tax receipts, ~~tax sale certificates~~, and accounts to ~~his-the~~ successor in office. The settlement shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(d) Settlement upon Vacancy during Term. – When a tax collector voluntarily resigns, ~~he~~ the tax collector shall, upon ~~his-the~~ last day in office, make full settlement ~~(in in the manner~~ provided in subsection ~~(e), above) (c) of this section~~ for all taxes in ~~his-the~~ tax collector's hands for collection. In default of ~~such~~ a settlement, or in case of a vacancy occurring during a term for any reason, it shall be the duty of the chief accounting officer or, in the discretion of the governing body, of some other qualified person appointed by it immediately to prepare and submit to the governing body a report in the nature of a settlement made on behalf of the former tax collector. The report, together with the governing body's action with respect ~~thereto, to it~~, shall be entered

in full upon the minutes of the governing body. Whenever a settlement ~~must be~~ is made in on
behalf of a former tax collector, ~~as provided in this subsection (d),~~ the governing body may
deliver the ~~tax receipts, tax records, and tax sale certificates~~ tax receipts and tax records to a
successor collector immediately upon the occurrence of the vacancy, or it may make whatever
temporary arrangements for the collection of taxes as may be expedient, but in no event shall any
person be permitted to collect taxes until ~~he~~ the person has given bond satisfactory to the
governing body.

(e) Effect of Approval of Settlement. – Approval of any settlement by the governing body
does not relieve the tax collector or ~~his~~ the tax collector's bondsmen of liability for any shortage
actually existing at the time of the settlement and thereafter discovered; nor does it relieve the
collector of any criminal liability.

(f) Penalties. – In addition to any other civil or criminal penalties provided by law, any
member of a governing body of a taxing unit, tax collector, or chief accounting officer who fails
to perform any duty imposed upon ~~him~~ that person by this section ~~shall be~~ is guilty of a Class 1
misdemeanor.

(g) Relief from Collecting Insolvents. – The governing body of any taxing unit may, in
its discretion, relieve the tax collector of the charge of taxes owed by persons on the insolvent
list that are five or more years past due when it appears to the governing body that ~~such~~ the taxes
are uncollectible.

(h) Relief from Collecting Taxes on Classified Motor ~~Vehicles.~~ Vehicles. – The board of
county commissioners may, in its discretion, relieve the tax collector of the charge of taxes on
classified motor vehicles listed pursuant to ~~G.S. 105-330.3(a)(1)~~ G.S. 105-330.3(a) that are one
year or more past due when it appears to the board that the taxes are uncollectible. This relief,
when granted, shall include municipal and special district taxes charged to the collector."

SECTION 3.(d) G.S. 105-378 reads as rewritten:

"§ 105-378. Limitation on use of remedies.

(a) Use of Remedies Barred. – No county or municipality ~~may~~shall maintain an action or procedure to enforce any remedy provided by law for the collection of taxes or the enforcement of any tax ~~liens (whether~~liens, whether the taxes or tax liens are evidenced by ~~the original tax receipts, tax sales certificates, tax receipts or otherwise)~~otherwise, unless the action or procedure is instituted within 10 years from the date the taxes became due.

(b) Not Applicable to Special Assessments. – ~~The provisions of subsection (a), above, shall not be construed to~~Subsection (a) of this section does not apply to the lien of special assessments.

(c) Repealed by Session Laws 1998-98, s. 26, effective August 14, 1998.

(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the county board of equalization and review or the Property Tax Commission, the tax collector ~~may~~shall not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer."

SECTION 3.(e) This section becomes effective October 1, 2021. **Subsections (a) and (b) of this section apply** to tax foreclosure actions commenced on or after that date.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.